

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES ALLEN HEINLE,

Petitioner,

v.

Case No. 05-CV-71677-DT

PERCY CONERLY,

Respondent.

/

**ORDER GRANTING PETITIONER'S SECOND MOTION TO PROCEED
AND REQUIRING RESPONSIVE PLEADING AND RULE 5 MATERIALS**

This matter is before the court on Petitioner's second "Motion to Proceed." On June 30, 2005, this court issued an order re-opening this case to allow Petitioner to proceed only on his exhausted claims and requiring Respondent to file a responsive pleading and the Rule 5 materials by December 26, 2005. Petitioner now seeks an order directing Respondent to file the Rule 5 materials and asks the court to adjudicate his claims. Respondent has filed no responsive pleading or Rule 5 materials, and thus failed to comply with the court's June 30, 2005 order. A responsive pleading and the Rule 5 materials are necessary for the proper adjudication of this matter. Accordingly,

IT IS ORDERED that Petitioner's second Motion to Proceed [Dkt. # 9] is GRANTED. Respondent shall file a responsive pleading addressing the merits of Petitioner's exhausted claims within 21 days of the date of this order. Petitioner shall then have 42 days from the date of the responsive pleading to submit a reply.

IT IS FURTHER ORDERED that, as part of the answer, Respondent shall file with the Clerk a copy of the relevant transcripts, the relevant appellate briefs submitted by Petitioner and the prosecution, and the state court opinions and orders as required by Rule 5. A separate index listing the materials being submitted shall also be filed.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 20, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 20, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

S:\Cleland\JUDGE'S DESK\Odd
Orders\05-71677.HEINLE.GrantingSecondMotionToProceed.2.wpd